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HOUSE BILL 2424 By  
Hassell

SENATE BILL 2744  
By Person

AN ACT to amend Tennessee Code Annotated, Title 37 and Title 49, Chapter 6, Part 34, relative to suspended or expelled school students.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 34, is amended by adding the following new section:

Section 49-6-3404. Not later than the third (3<sup>rd</sup>) class day after the day on which a student is removed from class by the teacher or by the school principal or the principal's designee, the principal or designee shall schedule a conference among the principal or designee, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. After the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the appropriate placement of the student for a period consistent with the student's offense.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 6, Part 34, is amended by adding the following new section:

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Section 49-6-3405. (a) In addition to the alternative schools provided for in Section 49-6-3402, each local education agency may annually enter, by September 1, into a joint memorandum of understanding with the juvenile court serving that area which:

(1) Outlines the responsibilities of the juvenile court concerning the establishment and operation of a juvenile justice alternative education program under this section;

(2) Defines the amount and conditions on payments from the school district to the juvenile court for students of the school district served in the juvenile justice alternative education program;

(3) Identifies those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which a student may be placed in the juvenile justice alternative education program;

(4) Identifies and requires a timely placement and specifies a term of placement for expelled students;

(5) Establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;

(6) Establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;

(7) Establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting if a juvenile is not under juvenile court jurisdiction;

(8) Establishes a plan to address special education services required by law; and

(9) Provides any other conditions or requirements deemed necessary by the court and the school district.

(b) A juvenile justice alternative education program must focus on English language arts, mathematics, science, social studies, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. Each program shall administer the same proficiency and standardized tests administered in public schools, and shall offer a high school equivalency program. The juvenile court or the court's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the court or the court's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.

(c) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 6, Part 34, is amended by adding the following new section:

Section 49-6-3406. (a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile court who the agency knows or believes is enrolled as a student in a public primary or secondary school, for an offense which is classified as a felony, shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled or believed to be enrolled of that arrest or referral within twenty-four (24) hours after the arrest or referral is made, or on the next school day. The superintendent shall promptly

notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The state board of education may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven (7) days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent. Both the oral and written notices shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct classified as a felony. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

(b) A parole or probation office having jurisdiction over a student described in this section who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall notify the new school officials of the arrest or referral in a manner similar to that provided for by this section, or of the conviction or delinquent adjudication in a manner similar to that provided for by this section.

(c) A law enforcement agency that arrests or refers to a juvenile court an individual who the law enforcement agency knows or believes is enrolled as a student in a private primary or secondary school shall make the oral and written notifications described by subsection (a) to the principal or a school employee designated by the principal of the school in which the student is enrolled.

SECTION 4. Tennessee Code Annotated, Title 49, Chapter 6, Part 34, is amended by adding the following new section:

Section 49-6-3407. The office of the district attorney or the office or official designated by the juvenile court shall, within two (2) working days, notify the school district that removed a student to an alternative education program if:

(1) Prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) The court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

SECTION 5. Tennessee Code Annotated, Title 49, Chapter 6, Part 34, is amended by adding the following new section:

Section 49-6-3408. In the manner required by the commissioner of education, each school district shall annually report to the commissioner:

(1) For each placement in an alternative education program established under this part:

(A) Information identifying the student, including the student's race, sex, and date of birth, that will enable the commissioner to compare placement date with information collected through other reports;

(B) Information indicating whether the placement was based on:

(i) Conduct violating the student code of conduct;

(ii) Conduct for which a student may be removed from class;

(iii) Conduct for which placement in an alternative education program is required; or

- (iv) Conduct occurring while a student was enrolled in another district and for which placement in an alternative education program is permitted;
- (C) The number of days the student was assigned to the program and the number of days the student attended the program; and
- (2) For each expulsion:
  - (A) Information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;
  - (B) Information indicating whether the expulsion was:
    - (i) Conduct for which expulsion is required under Section 49-6-3401 including information specifically indicating whether a student was expelled on the basis of Section 49-6-3401(g);
    - (ii) Conduct, other than conduct described by subdivision (iii), for which expulsion is permitted under Section 49-6-3401; or
    - (iii) Serious or persistent misbehavior occurring while the student was placed in an alternative education program;
  - (C) The number of days the student was expelled; and
  - (D) Information indicating whether:
    - (i) The student was placed in a juvenile justice alternative education program under Section 49-6-3405;
    - (ii) The student was placed in an alternative education program; or

(iii) The student was not placed in a juvenile justice or other alternative education program.

SECTION 6. Tennessee Code Annotated, Section 49-6-3401, is amended by adding the following new subsections:

(h)(1) The superintendent is authorized to enter into a memorandum of understanding with the juvenile court serving the area in which the local education agency is located to establish a “juvenile justice alternative education program” and to transfer or assign to that program students suspended or expelled for more serious offenses as designated in the memorandum of understanding;

(2) The superintendent may also enter into a memorandum of understanding with the juvenile court to provide for juvenile court supervision of students who would be subject to suspension or expulsion for offenses specified herein whether or not such student is suspended or expelled or as a condition of such suspension or expulsion.

SECTION 7. Tennessee Code Annotated, Title 37, Chapter 1, Part 1, is amended by adding the following new section:

Section 37-1-175. (a) A juvenile court is authorized to enter into a memorandum of understanding with any local education agency located within the jurisdiction of the court to establish and operate a “juvenile justice alternative education program”, as specified in Title 49, Chapter 6, Part 34, or to place under the court’s supervision students who are, or are liable to, suspension or expulsion, as specified in Section 49-6-3401 of this section.

(b) If the juvenile court and the local education agency have entered into a memorandum of understanding on creation of a juvenile justice alternative education program, the juvenile court shall:

(1) If the student is placed on probation order the student to attend the juvenile justice alternative education program in the county in which the

student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2) If the student is placed on deferred prosecution by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six (6) months as a condition of the deferred prosecution; and

(3) In determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student;

(4) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county, if such memorandum of understanding exists.

(c) For purposes of accountability under Title 49, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned school in the student's local education agency, including a special education program. The state board of education, in consultation with local boards of education and juvenile judges, shall develop and implement a system of accountability consistent with Title 49 to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The board shall adopt rules for the distribution of funds appropriated under this section to juvenile courts in counties which establish juvenile justice alternative education programs.



(d) If a local education agency elects to contract with a juvenile court for placement in the juvenile justice alternative education program of students expelled under Section 49-6-3401 and the juvenile court and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile court shall select an arbitrator, the school district shall select an arbitrator, and those two (2) arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this act. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:

(1) the actual average total per student expenditure in the district's alternative education setting;

(2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this act; and

(3) the costs necessary to achieve the accountability goals under this act.

(e) In accordance with rules adopted by the board of trustees for the Tennessee consolidated retirement system a certified educator employed by a juvenile court in a juvenile justice alternative education program shall be eligible for membership and participation in the system to the same extent that an employee of a local education agency is eligible. The juvenile court shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

(f) In relation to the development and operation of a juvenile justice alternative education program, a juvenile court and a county are immune from liability to the same extent as a school district, and the juvenile court's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.

(g) If the juvenile court and local education agency enter into a memorandum of understanding on supervision of suspended or expelled students, as provided for in subsection (a) and Section 49-6-3401(h), supervision shall be limited to the following occurrences:

(1) Conduct, other than a traffic offense, that violates the penal laws of this state of the grade of misdemeanor that are punishable by fine only;

(2) The unexcused voluntary absence of a child on ten (10) or more days or parts of days within a six-month period or three (3) or more days or parts of days within a four-week period from school without the consent of his parents;

(3) The voluntary absence of a child from home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(4) Conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or second offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or second offense);

(5) Conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and adhesives or other volatile chemicals;

(6) An act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled; or

(7) Conduct that violates a reasonable and lawful order of a court.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. For the purpose of developing and promulgating any necessary rules or regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 1998, the public welfare requiring it.